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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91196629
Party	Plaintiff Gamelink, LLC
Correspondence Address	PHILIP GREEN LAW OFFICES OF GREEN & GREEN 1000 4TH STREET , SUITE 595 SAN RAFAEL, CA 94901 UNITED STATES phil@iplegal.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Philip Green
Filer's e-mail	phil@greenandgreen.com
Signature	/PG/PhilipGreen/
Date	02/01/2011
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PHILIP GREEN (State Bar No. 92389)  
BEVERLY R. GREEN (State Bar No. 92388)  
LAW OFFICES OF GREEN & GREEN  
1000 4th Street, Suite 595  
San Rafael, California 94901  
Telephone: 415.457.8300  
Facsimile: 415.457.8757  
Email: phil@iplegal.com

Attorneys for: GameLink, L.L.C. and  
Private Media Company

**IN THE  
TRADEMARK TRIAL AND APPEALS BOARD**

GameLink, L.L.C. a Private Media Company

Plaintiff/Opposer

vs.

Timothy Dunning,

Defendant/Respondent

IN RE: GAMELINK

Ser. No. 77770614

AMENDED

NOTICE OF OPPOSITION  
And SHORT AND PLAIN STATEMENT

For:

1. Priority and Likelihood of Confusion Under Trademark Act Section 2(D);
2. False Suggestion of a Connection Under Trademark Act Section 2(a);
3. Mere descriptiveness under Trademark Act Section 2(e)(1);
4. Fraud [Fed. R. Civ. P. 9(b)]; and
5. Dilution

COMES NOW GAMELINK, L.L.C. AND FILES THIS AMENDED NOTICE, AND  
OPPOSES THE APPLICATION FOR THE MARK GAMELINK, Ser. No. 77770614 and  
alleges as follows.

1. Opposer GameLink, L.L.C. incorporates all statements made heretofore, and incorporates herein all statements made on the ESTTA form online.

2. GameLink, L.L.C. a Private Media Group Company has grounds to oppose the term “Game Link” Ser. No. 77770614, because it is likely to cause confusion and is causing dilution to Opposer’s more famous and senior mark, GAME LINK®.

**I. Priority and Likelihood of Confusion Under  
Trademark Act Section 2(D)**

3. Opposer GameLink, L.L.C. incorporates all statements made heretofore, and incorporates herein all statements made on the ESTTA form online.
4. Opposer has made prior use of its marks GameLink since 1993. Its pleaded mark(s), GAME LINK® Registration Number 2206576 (Adult goods and sex toys) and Registration Number: 3023336 (for on-line retail store services, computerized on-line ordering services, and wholesale ordering services in the field of entertainment goods namely videos, CDs, DVDs and order fulfillment services and Video-on-demand transmission and streaming of audio and video materials on the Internet since 12-31-2003) have been used since 1993 to distinguish Applicant’s online Adult Retail services from the services of others. The mark GAME LINK® has served as a distinctive and fanciful way to identify the Adult services of Opposer, as Opposer neither has links to games nor does it sell games per se, but sells adult goods, videos, books, sex toys and the like. It has become literally in icon on the Internet for such goods and services. Opposer advertises on online services such as Twitter, Facebook and other social networking websites.
5. The dates of use and registration for Opposer’s older GameLink® mark as “Class 035. First use: First Use: 1993/02/20 First Use In Commerce: 1993/02/20”: is all clearly before Applicant/Respondent. In Respondent’s application he recites “FIRST USE IN COMMERCE DATE At least as early as 06/21/2009.” This is more than 16 years later than Opposer.
6. Applicant/Respondent proposes to use its identical mark Game Link on the Internet to describe an online and/or physical place where its customers can go to link up with and to

1 play online electronic games, and Applicant/Respondent is advertising its services online.  
2 Further, Applicant advertises its “Game Link” services online using the same channels of  
3 trade that Opposer uses, including but not limited to Twitter, Facebook and other social  
4 networking websites and at <http://www.getlinkednow.com/>. Applicant’s use of its mark  
5 can be found in Internet searches, as can Opposer’s identical mark. Not only that, but the  
6 proposed Applicant’s website already has an ® on its use of the Game Link mark, prior to  
7 its being registered.

- 8 7. The PTO originally responded to the pending Applicant with an Action. Therein the PTO  
9 Examiner stated, “Registration of the applied-for mark is refused because of a *likelihood of*  
10 *confusion with the marks in U.S. Registration Nos. 1710174, 3023336, and 3241492.*  
11 Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et  
12 seq....Trademark Act Section 2(d) bars registration of an applied-for mark that so  
13 resembles a registered mark that it is likely that a potential consumer would be confused or  
14 mistaken or deceived as to the source of the goods and/or services of the applicant and  
15 registrant....In this case, the following factors are the most relevant: similarity of the  
16 marks, similarity of the goods and/or services, and similarity of trade channels of the goods  
17 and/or services...”.
- 18 8. Opposer alleges that the contemporaneous use of the Opposer’s and of Applicant’s  
19 respective marks for their respective goods and/or services online and in advertising,  
20 including Internet advertising, is likely to cause confusion, mistake or to deceive  
21 consumers both by leading Applicant’s consumers believing *inter alia*, that Applicant has  
22 an Adult component or that Opposer has a gaming console or “adult booth” business online  
23 and/or in Georgia, and causing other such likelihood of confusion. Applicant’s use of  
24 Opposer’s identical mark, for their respective services, is likely to cause confusion, mistake  
25 or to deceive. An “adult booth” could mean a private booth where one can watch and  
26 interact with an adult video and/or video-interactive game.

**II. False Suggestion of a Connection Under  
Trademark Act Section 2(a)**

9. Opposer GameLink, L.L.C. incorporates all statements made heretofore, and incorporates herein all statements made on the ESTTA form online.
10. The Proposed mark is the same as or so close an approximation of the name or identity of a person or institution, that being Opposer. Opposer has been using the mark GAME LINK since 1993, when the Internet barely began to be used as an online consumer market place.
11. The proposed mark Game Link would be recognized as it is identical to the mark GAME LINK® used by Opposer.
12. The person or institution, Opposer, identified in the mark is not connected with the services performed by the Applicant under the mark whatsoever, and Opposer wants to make sure that no such identity or false suggestion of a connection ever develops.
13. The fame or reputation of Opposer, having been using the mark GAME LINK for its famous Adult online retail services since 1993, is of such nature that a connection between or with the proposed Applicant's Game Link would be presumed when Applicant's mark is used on its services.

**III. Mere descriptiveness under Trademark Act Section 2(e)(1)**

14. Opposer GameLink, L.L.C. incorporates all statements made heretofore, and incorporates herein all statements made on the ESTTA form online.
15. The Proposed Mark Game Link is unregistrable under Section 2(e)(1) since it merely describes an ingredient, quality, characteristic, function, feature, purpose or use of Applicant's specified goods or services.
16. As described in Applicant's application, the Proposed Mark, Game Link is descriptive of a service that provides gaming consoles where a person may *link* into various electronic *games*.

1 17. Applicant's new identity of services includes the temporary ability to use an electronic  
2 video game. This means that a user is "linked" into a video game and can unlink therefrom.

3 **IV. Fraud [Fed. R. Civ. P. 9(b)]**

4 18. Opposer GameLink, L.L.C. incorporates all statements made heretofore, and incorporates  
5 herein all statements made on the ESTTA form online.

6 19. The Applicant made certain misrepresentations to the USPTO.

7 20. Applicant knowingly made a false, material representation of fact in connection with his  
8 application for registration, with the intent to deceive the USPTO through his responses to  
9 the Action on the proposed mark.

10 21. The PTO originally responded to the pending Applicant with an Action. Therein the PTO  
11 Examiner stated, based on the original identification of the goods (in Class 009):

12 "Electronic LCD advertisement display unit with multi-networking (TCP/IP) capabilities;  
13 Electronic LCD display unit with multi-networking (TCP/IP) capabilities; Games adapted  
14 for use with television receivers; LCD large-screen displays; Video game consoles for use  
15 with an external display screen or monitor; Video game machines for use with televisions;  
16 Video output game-machines for use with televisions"

17 and Services (in class 041): "Entertainment services, namely, providing on-line computer  
18 games; Rental of television sets."

19 These recitations of goods and services include references to TCP/IP Internet protocols that  
20 showed the Examiner that the goods and services, being online, would potentially be  
21 confused with Opposer and others.

22 22. The PTO refused registration, "...because of a *likelihood of confusion* with the marks in  
23 U.S. Registration Nos. 1710174, 3023336, and 3241492 [GameLink]. Trademark Act  
24 Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq....Trademark Act Section  
25 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is  
26 likely that a potential consumer would be confused or mistaken or deceived as to the source  
27 of the goods and/or services of the applicant and registrant....In this case, the following

factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services...”. [Emphasis Supplied]

23. In his response to the PTO Examiner, the Applicant tried to make it appear as though there was *only* the brick-and-mortar (physical) location for his Game Link gaming parlor. He failed to mention again the TCP/IP and other Internet use and advertising of using the same channels of advertising as does GameLink, the Opposer. He *knowingly attempted to mislead the Patent and Trademark Office* by filing false and misleading statements in his response to the PTO Action pushing the idea that this is only a physical location and could not class with Class 009 goods of GameLink. These statements are knowingly false since the original claim of goods in Class 009 stated it is LCD units, video displays and similar goods. The standard is set forth and is pleaded clearly by the allegation that Defendant had skirted the PTO Action by the Examiner by asserting conflicting things about its business and knowing misleading the facts away from the Applicant’s internet presence and advertising.

24. This occurred, on information and belief, when Applicant/Respondent responded to the original PTO Office Action on 03/17/2010, after the Examiner cited the Opposed Mark as having likelihood to cause confusion with the Opposer’s prior and registered GameLink® mark, and others, by the Applicant sending to the PTO as evidence of non-confusion: “Three photos of our *brick and mortar establishment* as further evidence of the distinction of our mark as compared to the three current registrars - *all of which have no physical location to offer consumers access to their products and/or services.*” [Emphasis Supplied] While this is *in part* true, it knowingly hides the fact that the Proposed Mark is also being used online, and in the same channels of trade as the Opposer’s prior and registered marks for similar goods/services, online viewing of videos.

25. In the Applicant/Respondent's textual reply, he gave a new definition: "Entertainment services, namely, providing temporary use of non-downloadable video games" at the beginning of the description. This enhancement phrase was taken directly, and written verbatim, from the USPTO classification of goods and services class 041. *This phrase more accurately describes what our service provides, as "arcade" by all definitions researched, is recognized as coin-operated video game machines.* We are console-based and our clients have no direct access to the consoles themselves. All *game* and console preparations are conducted by a Game Link attendant." [Italics emphasis added].

26. It is either a 'brick and mortar' establishment *only*, with no Internet use or advertising, *or it is Internet related*. The issue here is that Applicant does not tell the PTO that he uses the Internet to advertise. In fact there is Internet use by advertising in the same functional channels as the Opposer, and the Opposer believes use of the Internet for Applicant's advertising is likely to cause confusion on the Internet, in social media, and in advertising.

27. The fraudulent statements tend to lead the PTO Examiner away from the Internet and similar channels of trade facts and try to make the Examiner believe that the Proposed Mark is used in a store, and not online. There is a strong Internet use and thus a use that it is likely to cause confusion by and to consumers searching the Internet for 'Game Link.' Applicants knowing that Internet use was an issue, failed to tell the PTO that this is the case.

## V. Dilution

1. Opposer GameLink, L.L.C. incorporates all statements made heretofore, and incorporates herein all statements made on the ESTTA form online.
2. GameLink, L.L.C., under the Trademark Dilution Revision Act of 2006, will be likely injured by diluting the GameLink® mark through blurring, by the potential and likelihood of dilution that can occur if Opposer's customers, believing that Opposer had, by way of example, left its normal business and become a gaming facility, which would tend to cause



GameLink customers to go to others for adult entertainment. GameLink's mark has become famous in its market and became so long before the Respondent party adopted his mark. The GameLink® mark is in fact famous and distinctive in its market, and the other party's use of its mark is likely to dilute the famous GameLink® mark.

3. GameLink will likely be injured by diluting its trademark GameLink® through tarnishment, in that it is likely that the Opposer's GameLink® mark will become weakened as one of the best places to go for discrete adult entertainment purchases.
4. Customers of GameLink® that see the advertising of Applicant/Respondent and are likely to believe that Opposer GameLink is no longer in the adult entertainment business, or that it has changed its format, that it has become a sponsor or is sponsoring Applicant, or that it has sold its name to another, including, but not limited to, Applicant. There are other legal implications for Opposer GameLink in that government entities might confuse it with the physical locations of Applicant, making GameLink, L.L.C. a target for government and licensing issues, taxation issues, and other implications that dilute the value of Opposer's trademark GameLink®. The markets for Applicant's services and those of Opposer should not mix. Applicant alleges that it runs, quoted from its website:

"Gaming - we are an XBOX360:El - based gaming lounge. Our design satisfies even the most demanding gamer and promotes communal play by providing 12 stations of gaming interactivity. *Our community is wireless, internet connected. and XBOXLiv8® enabled - your gamer tag or ours.* Each station consists of high-end, comfortable leather seating. 47-inch LCD HDTV, and advanced surround-sound dome technology the audio quality is amazing! Additionally, we do: Tournaments Birthday Parties Private Parties Gaming Leagues Game Link™ Mobile Game Link™"" University...". [Emphasis Supplied]

5. Yet in a response to the Action of the PTO dated Oct 2, 2009, Mr. Dunnigan for Applicant stated, "Three photos of our brick and mortar establishment as further evidence of the distinction of our mark as compared to the three current registrars [sic.] - all of which have

no physical location to offer consumers access to their products and/or services, specified or implied, as related to their registered mark”.

6. Applicant does not need to advertise all over the Internet, including, but not limited to, Twitter, and Facebook, all places where one can find and follow Opposer. Also, it is straight out copying of the GameLink® marks including 3023336 cited by the PTO Examiner, and Opposer’s GameLink® marks.

7. GameLink, L.L.C. marks:

a. GameLink® Registration Number: 3023336

Mark (words only): GAMELINK is for, “on-line retail store services, computerized on-line ordering services, and wholesale ordering services in the field of entertainment goods namely videos, CDs, DVDs and order fulfillment services”

b. Registration Number: 2206576

Mark (words only): GAME LINK for: International Class: 035

Class Status: Active, electronic and online retailing services by means of a global computer network, featuring products for adults, namely, videos, CD-ROMs, films, books, rubber goods and adult toys

Basis: 1(a)

First Use Date: 1993-02-20

First Use in Commerce Date: 1993-02-20

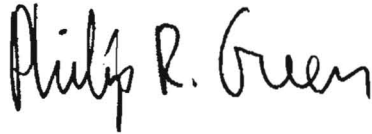
a. GameLink® is also registered internationally.

WHEREFORE,

Plaintiff Opposer prays that

1. The mark GAMELINK by Applicant Timothy Dunning be Cancelled,
2. That the Mark not be registered and
3. Any other order this Board may make in its discretion.

1  
2 Dated: February 1, 2011  
3

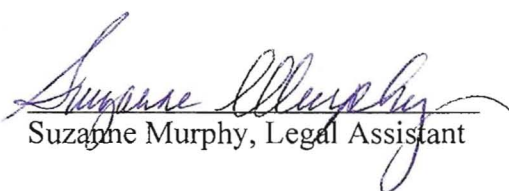
4   
5

6 Philip Green attorney for GameLink, L.L.C.  
7

8 ***CERTIFICATE OF SERVICE***  
9

10 The undersigned hereby certifies that copies of the foregoing AMENDED NOTICE OF  
11 OPPOSITION were served upon the attorneys for applicant, by depositing copies with the  
12 United States mail, first class, postage prepaid, this February 1, 2011, in envelopes addressed  
13 as follows:  
14

15 Morris E. Turek, Esq.  
16 YourTrademarkAttorney.com  
17 167 Lamp & Lantern Village, #220  
18 Chesterfield, MO 63017-8208

19   
20 Suzanne Murphy, Legal Assistant  
21  
22  
23  
24  
25  
26  
27  
28